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6 IN THE UNITED STATES DISTRICT COURT  
7  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 DEE M. ROBY,

No. C 04-04650 JSW

10 Plaintiff,

11 v.

**ORDER DENYING PLAINTIFF'S  
MOTION FOR LEAVE TO  
AMEND**

12 AMERICAN AIRLINES, CAROL HICKEY,  
13 DEBRA WHALEN, PAT NEWTON, and  
DOES 1 through 50, inclusive,

14 Defendants.  
15 \_\_\_\_\_/

16 Now before the Court is the motion of Plaintiff Dee M. Roby ("Plaintiff") to amend her  
17 complaint "to add a *Tameny* cause of action for discrimination due to her industrial injuries."  
18 The Court finds the present motion appropriate for decision without oral argument and hereby  
19 VACATES the hearing set for October 14, 2005. *See* Civil L.R. 7-1(b).

20 Defendant American Airline, Inc. previously moved to dismiss causes of action in  
21 Plaintiff's First Amended Complaint ("FAC"), including the third and fifth causes of action. In  
22 her third cause of action for wrongful termination, Plaintiff had alleged that the defendants  
23 wrongfully terminated her employment. (FAC ¶ 40.) Plaintiff's fifth cause of action was  
24 entitled "wrongful termination in violation of public policy - labor code § 132(a)." (FAC at p.  
25 8.) In this claim, Plaintiff had alleged that the defendants discriminated against her in violation  
26 of public policy because she suffered an industrial injury and contemplated filing a Workers'  
27 Compensation claim. (FAC ¶¶ 51-54.)  
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1 American Airlines moved to dismiss the third cause of action on the grounds that  
2 Plaintiff failed to identify the specific statutory or constitutional provision that had allegedly  
3 been violated, and moved against the fifth cause of action on the grounds that the California  
4 Workers' Compensation Appeals Board has exclusive jurisdiction over claims based on §  
5 132(a). Instead of clarifying what statutory or constitutional provision on which her claim for  
6 wrongful termination was based or arguing that the Workers' Compensation Appeals Board did  
7 not have exclusive jurisdiction, Plaintiff filed a statement of non-opposition to American  
8 Airlines' motion. On February 22, 2005, based on Plaintiff's statement of non-opposition, the  
9 Court granted American Airline's motion and dismissed these causes of action.

10 Over five months later, Plaintiff filed the instant motion for leave to amend. However,  
11 the Court already dismissed the claim Plaintiff now seeks leave to allege. Plaintiff "concurs"  
12 that the third cause of action in her FAC was a "common law cause of action (*Tameny*) for  
13 Wrongful Termination." (Reply Br. at 2.) Plaintiff argues that the fifth cause of action in her  
14 FAC was merely alleging a statutory violation and was not a claim for wrongful termination in  
15 violation of public policy. (Reply Br. at 2.) However, a review of Plaintiff's allegations in this  
16 claim demonstrates otherwise.

17 Because the claim Plaintiff now seeks leave to allege has already been dismissed by this  
18 Court, the Court DENIES Plaintiff's motion for leave to amend.

19 **IT IS SO ORDERED.**

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21 Dated: October 7, 2005

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23 JEFFREY S. WHITE  
24 UNITED STATES DISTRICT JUDGE  
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